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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,702	08/05/2003	Kimberly A. Campana	29939/38771	7556

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EXAMINER
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GELLNER, JEFFREY L

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 05/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/634,702

Applicant(s)

CAMPANA, KIMBERLY A.

Examiner

Jeffrey L. Gellner

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 25 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,5,7-33,35-40,42 and 43 is/are pending in the application.
- 4a) Of the above claim(s) 10-29 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 30,32,33,36,37,39,40 and 43 is/are allowed.
- 6) ☒ Claim(s) 1,4,5,7,8,35 and 42 is/are rejected.
- 7) ☒ Claim(s) 2,9,31 and 38 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Specification***

The disclosure is objected to because of the following informality:

On page 4, line 28, after "vent hole" should be added --pressure equalization hole-- to avoid any ambiguity.

Appropriate correction is required.

### ***Claim Objections***

Claims 31 and 38 are objected to because of the following informality:

Claims 31 and 38 appear to be redundant of claims 30 and 37, respectively.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 35 and 42 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 35 depends upon claim 34 which has been cancelled.

Claim 42 depends upon claim 41 which has been cancelled.

***Claim Rejections - 35 USC §103***

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4, and 5 are rejected under 35 U.S.C. §103(a) as being unpatentable over Fredrickson et al. (US 5,803,594) in view of Gnaedig (US 5,426,888).

As to Claim 1, Fredrickson et al. discloses a lawn edging (Figs. 1-3) comprising a hollow (see Fig. 2) middle or end block (11 of Figs. 1-3), each of the hollow middle or end block being free of openings or passages except for a single pressure equalization hole (region where element 12 enters the block - see Figs. 1 and 2); a plastic living hinge (22 of Figs. 1-3), each plastic living hinge being free of metal; and the block including an upper and lower portions (top and bottom of 11 in Figs. 1-3), the upper portion including a front face (a face on 18 of Figs. 1-3) comprising a rough, three-dimensional simulated rock texture ("Moonstone" of col. 1 lines 40-44), each lower portion being tapered (from Fig. 3 in that the lower portion tapers out). Not disclosed is a plurality of middle blocks and two end blocks the plastic living hinge connecting the blocks. Gnaedig, however, discloses an edging with a plurality of blocks (shown in Figs. 2 and 3) connected by a living hinge (50 of Fig. 3). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the edging of Fredrickson et al. by having a plurality of blocks connected by a living hinge as disclosed by Gnaedig so as to allow the edging surround any shaped walkway or garden.

As to Claim 4, the limitations of Claim 1 are disclosed as described above. Not disclosed is the lawn edging fabricated by a continuous forming process. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the edging of Kono as modified by Johnson by making with a continuous vacuum forming process as a known method of shaping plastic objects. MPEP 2113 (Product-by-Process Claims) states that "if the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior art product was made by a different process." Here, the Applicant's edging is anticipated by Fredrickson et al. as modified by Gnaedig. The process by which the edging is made is not patentably distinct.

As to Claim 5, Fredrickson et al. as modified by Gnaedig further disclose the living hinge permitting two adjacent blocks to be positioned at an angle ranging from about 180° to 90° (Gnaedig at Figs. 2 and 3).

Claims 7 and 8 are rejected under 35 U.S.C. §103(a) as being unpatentable over Fredrickson et al. (US 5,803,594) in view of Gnaedig (US 5,426,888) in further view of Kono (JP2000-300071).

As to claims 7 and 8, the limitations of Claim 1 are disclosed as described above. Not disclosed are the blocks made of two or more plastic materials. Kono, however, discloses the blocks made of two or more plastic materials ("flexible synthetic resins" of para. 0007 of translation of Kono) with one being polyethylene (para. 0007 of translation of Kono). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the edging of Fredrickson et al. as modified by Gnaedig by using several plastics and polyethylene depending upon availability of material.

***Allowable Subject Matter***

Claims 30-33, 36, 37-40, and 43 are allowed over the art or record.

Claims 35 and 42 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claims 2 and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant is reminded that before the application can pass to issue claims 11-29 must be cancelled.

***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

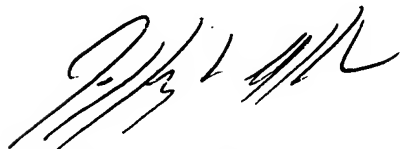
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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 571.272.6887. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 571.272.6891. The official fax telephone number for the Technology Center where this application or proceeding is assigned is 703.872.9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jeffrey L. Gellner  
Primary Examiner